

W.P.(C) No.17562/2021 & Connected cases
: 2 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 2ND DAY OF FEBRUARY 2022/13TH MAGHA, 1943

WP(C) NO. 17739 OF 2021

PETITIONER:

P.A.NOUSHAD
AGED 58 YEARS
ARD NO.1732044 (STATE SECRETARY - ALL KERALA
RETAIL RATION DEALERS ASSOCIATION, REG.
NO.540/89, PARAKKATTU BUILDING, PULLEPPADY
ROAD, ERNAKULAM, RESIDING AT 48/1837, PEEBEEES
PARAKKATTU HOUSE, PUTHENPURA ROAD, ELAMAKKARA,
COCHIN-682026

BY ADVS.
K.JAJU BABU (SR.)
BRIJESH MOHAN
M.U.VIJAYALAKSHMI

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
FOOD AND CIVIL SUPPLIES DEPARTMENT
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001
- 2 THE DIRECTOR OF CIVIL SUPPLIES,
OFFICE OF THE COMMISSIONER OF CIVIL SUPPLIES
PUBLIC OFFICE COMPLEX
THIRUVANANTHAPURAM 695 033
- 3 KERALA STATE CIVIL SUPPLIES CORPORATION
(SUPPLYCO), MAVELI BHAVAN, MAVELI ROAD,
GANDHI NAGAR, COCHIN-682020
REPRESENTED BY ITS CHAIRMAN AND MANAGING
DIRECTOR

W.P.(C) No.17562/2021 & Connected cases
: 3 :

BY ADVS.

SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
R.LAKSHMI NARAYAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.02.2022, ALONG WITH WP(C).17562/2021 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 2ND DAY OF FEBRUARY 2022/13TH MAGHA, 1943

WP(C) NO. 25197 OF 2021

PETITIONERS:

- 1 T.MUHAMMEDALI
AGED 64 YEARS
ARD NO 143, PALANGAD, KANNIPPARAMBU, MAVOOR,
KOZHIKODE (ALSO THE GENERAL SECRETARY,
ALL KERALA RETAILS RATION DEALERS ASSOCIATION)
RESIDING AT NOUFAL NIVAS CHEROOPPA,
KOZHIKODE-673 661
- 2 BABY THOMAS,
ARD NO.213, THRIPIUNITHURA, ERNAKULAM-682 301,
(ALSO THE ORGANIZING SECRETARY ALL KERALA
RETAIL RATION DEALERS ASSOCIATION) RESIDING AT
NADUVILA VEETIL THEKKUMBHAGAM, MARKET ROAD,
THRIPIUNITHURA-682 301

BY ADVS.
K.JAJU BABU (SR.)
BRIJESH MOHAN
ANTONY THOMAS
M.U.VIJAYALAKSHMI
ALISHA CHALAKAL

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
FOOD AND CIVIL SUPPLIES DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 THE DIRECTOR OF CIVIL SUPPLIES,
OFFICE OF THE COMMISSIONER OF CIVIL SUPPLIES,
PUBLIC OFFICE COMPLEX,
THIRUVANANTHAPURAM-695 033.

- 3 KERALA STATE CIVIL SUPPLIES
CORPORATION(SUPPLYCO)
MAVELI BHAVAN, MAVELI ROAD, GANDHI NAGAR,
COCHIN-682 020, REPRESENTED BY ITS CHAIRMAN AND
MANAGING DIRECTOR.
- 4 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT OF
INDIA, MINISTRY OF CONSUMER AFFAIRS,
FOOD AND PUBLIC DISTRIBUTION ,
NEW DELHI-110 006.

BY ADVS.
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL
SRI.R.LAKSHMI NARAYAN
SRI.JAGADEESH LAKSHMAN, CGC
SRI.S.MANU, ASGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.02.2022, ALONG WITH WP(C).17562/2021 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

N. NAGARESH, J.

.....
W.P.(C) Nos.17562, 17739, 18487
and 25197 of 2021
.....

Dated this the 2nd day of February, 2022

J U D G M E N T

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Petitioners in these writ petitions are Authorised Retail Distributors (ARD) appointed under Clause 45 of the Kerala Rationing Order, 1966. The petitioners seek to declare that the ARDs appointed under the Kerala Rationing Order, 1966 are eligible and entitled for commission towards distribution of the Free Food-Kits pursuant to Government Order dated 06.04.2020. Consequential and incidental reliefs are also sought for.

2. The petitioners state that as per the provisions of the Food Safety Act, for public distribution of food articles, permissible commission is ₹220/- per quintal. The

Government of Kerala issued Ext.P3 order dated 30.11.2018 (in W.P.(C) No.17739/2021) in tune with the Food Safety Act, fixing commission for ARDs at the rate of ₹220/- per quintal. Therefore, from the year 2018, the ARDs are entitled to commission as prescribed under Ext.P3.

3. The Government issued Ext.P4 order dated 06.04.2020 (in W.P.(C) No.17739/2021) deciding to supply free Food-Kits of 17 food articles to all ration card holders and also to those not having ration cards. The decision was taken in the context of Covid-19 pandemic. The distribution of free Food-Kits was to be done by ARDs and the expenditure was to be met from the Chief Minister's Relief Fund. Ext.P5 instructions dated 08.04.2020 (in W.P.(C) No.17739/2021) made it clear that any delay or latches on the part of the ARDs in distributing free Food-Kits would be seriously dealt with. Ext.P5 did not refer to any commission payable.

4. The petitioners state that on 23.07.2020, the Government proposed commission at the rate of ₹5/- per free

Food-Kit. The All Kerala Retail Ration Dealers' Association objected to the rate and consequently, the rate was revised to ₹7/- per free Food-Kit as per Ext.P6 order dated 30.07.2020 (in W.P.(C) No.17739/2021). The petitioners state that the free Food-Kits ordered to be supplied as per Ext.P4 were of 10 Kg. each and therefore going by Ext.P3, the petitioners are eligible to get commission at the rate of ₹22/- per kit. However, the petitioners were paid only ₹7/- per kit. Even the said commission was discontinued during the months of May, June and July, 2020.

5. Distribution of Free Food-Kit was resumed in August, 2020 and the Kits weighed 5.100 to 5.400 Kg. The Government ordered to collect ₹500/- to ₹700/- from the ARDs as donation to the Chief Minister's Relief Fund, as per Ext.P7(a). The Government has been collecting from the ARDs One Rupee per Quintal of Rice and Wheat towards Covid Relief Fund. The Government as per Ext.P7 Order directed to pay ₹1,000/- as honorarium to ARDs. The so-called honorarium was paid to ARDs from the amounts

collected from the ARDs. At the same time, by Ext.P8 order dated 19.02.2021, the commission was reduced from ₹7/- to ₹5/- per kit.

6. The said commission at the rate of ₹5/- was paid only for the month of August, 2020. For the month of September, 2020, no commission has been paid. The Government, however, made payments for packing charges, sealing charges and transporting charges, promptly. By G.O. dated 17.05.2021, the Government decided to continue to give Covid-19 Free Food Kits in May, 2021 also. The All Kerala Retail Ration Dealers' Association submitted Ext.P10 representation dated 25.05.2021 demanding sanction and disbursement of commission pending from September, 2020. Pursuant thereto, Ext.P11 G.O. was issued permitting the Director of Civil Supplies to disburse ₹4.25 Crores towards ARD commission. However, arrears of commission for the last 11 months remain yet to be paid.

7. The learned counsel for the petitioners argued that the ARDs are eligible and entitled to commission towards

supply of rationed articles under the Public Distribution System in accordance with the time limit prescribed in Ext.P1 and the rate fixed by the Government in Ext.P3. The ARDs have supplied Free Food-Kit along with other rationed articles as a sincere service, in implementation of Ext.P4 in the wake of spread of Covid-19 pandemic. The Government has paid charges incurred for preparation and distribution of Free Food-Kits in the fields of Packing, Sealing, Transportation, etc. The ARDs, who have supplied the Kits to end-users alone, are discriminated against.

8. The 1st respondent-State of Kerala resisted the writ petition filing counter affidavit. The 1st respondent contended that the disbursement of commission and price fixing for the free distribution of Food-Kits is a policy decision of the Government, not covered by any statute. Hence, a writ petition is not maintainable. The State is responsible to ensure that every household get adequate food at fair price. The decision to distribute Free Food-Kits was taken in the wake of Covid-19 Lockdown. Seventeen essential grocery

items were purchased by Supplyco. The ARDs only did personal distribution. Government initially decided to pay at the rate of ₹5/- to ARDs which was enhanced to ₹7/- later. For Onam Kit distribution consisting of 11 food items also, amounts were sanctioned at the rate of ₹5/-.

9. The Director, Civil Supplies disbursed ₹5,91,36,112/- for supply of subsistence kit. Unfortunately, the ARDs' Association demanded commission for distribution of Free Food-Kits to the general public. As a goodwill gesture, the Government offered ₹5/- per kit which was later enhanced to ₹7/-. The petitioners have no legal right to claim commission for distribution of Free Food-Kits. The ARDs were supplied with Food-Kits at door step. They only had to distribute the same. No efforts were needed at the end of ARDs. During difficult times, all agencies including Government servants, came forward giving physical and other supports to aid the Government in its Herculean efforts to keep the pandemic situation under control. Every citizen, Agency and Organisation in Kerala took it as their duty and

obligation to help the State's efforts without expecting or demanding anything in return.

10. Still, considering the demands of ARDs, the Government sanctioned honorarium of ₹1,000/- to them. Covid Insurance of ₹7.5 lakhs was provided to 28398 ARD Dealers and Salesmen during pandemic period spending ₹3,01,02,000/-. The ARDs were receiving commission at the rate of ₹220/- per Quintal for the additional food grains distributed under various schemes like PMGKAY and ANB of Government of India and also OMSS scheme. The ARDs were placed in a financially stable condition even when all other traders and labourers suffered. The respondents urged that it is unfair to demand commission for service rendered by the ARDs during the pandemic period which is against the humanity and spirit of brotherhood.

11. I have heard the learned counsel for the petitioners, the learned Additional Advocate General and Government Pleader representing the State of Kerala and the learned Standing Counsel for Kerala State Civil Supplies

Corporation.

12. The ARDs of the petitioners were governed by the Kerala Rationing Order, 1966 and are now governed by the Kerala Targeted Public Distribution System (Control) Order, 2021. The petitioners were appointed under the Kerala Rationing Order, 1966. The commission/margin payable to the ARDs/Fair Price Shops appointed under the Kerala Rationing Order, 1966 and the Kerala Targeted Public Distribution System (Control) Order, 2021 for distribution of rationed articles, is governed by the packages and orders issued by the Government from time to time.

13. Ext.P3 G.O. dated 30.11.2018 was issued in the context of implementation of the Food Safety Act, 2013 in Kerala. Ext.P3 provided that ration dealers who distribute pulses up to 44 Quintal are eligible to receive commission at the rate of ₹220/- per Quintal. Distribution of Free Food-Kits undertaken by the Government during Covid-19 pandemic stands on different footing. The Free Food-Kits weighed, prepared and packed are supplied at the door of ARDs and

the ARDs were to only distribute the prepared Food-Kits to eligible citizens.

14. The Free Food-Kit distribution was a special case requiring much lesser efforts on the part of ARDs. The Government therefore originally fixed ₹5/- per Kit as commission, as per a G.O. dated 23.07.2020 and taking into consideration the request of the All Kerala Retail Ration Dealers' Association, the commission was enhanced to ₹7/- per Kit as per Ext.P6 G.O. dated 30.07.2020. The petitioners are entitled to receive commission at the rates prescribed under Ext.P6 G.O. The petitioners have no legal right to claim commission prescribed under Ext.P3 G.O., which was not intended to apply to special cases like Free Food-Kit distribution.

15. The stand of the Government is that since the Free Food-Kit distribution is a humanitarian service and since a large number of NGOs and common public came forward to render free service in the massive efforts of the Government to combat Covid-19 pandemic, the supply of

“free food” kit through ration shops shall be treated as voluntary service and not a paid job. A service becomes voluntary only when the person performs it willingly without pay. In the case of Free Food-Kit distribution, neither willingness was called for from the ARDs nor the ARDs have come forward themselves expressing willingness to do the service without payment. The Government required the ARDs to distribute Free Food-Kits and even indicated that non-distribution of Kits in time will be viewed seriously. In the circumstances, the Government will not be justified in treating the Free Food-Kit distribution as voluntary service by ARDs.

16. Yet another fact projected by the Government is that the Government has sanctioned an amount of ₹1,000/- as honorarium to the ration dealers towards distribution of Free Food-Kits, as per G.O. dated 09.09.2020 and has provided Covid Insurance of ₹7.5 lakhs for one year. Such benefits extended by the Government cannot be treated as benefits in lieu of commission/margin payable to the ARDs.

Furthermore, after issuing Ext.P6 G.O., the Government would not be justified in denying declared commission to the ARDs in view of the principles of estoppel. The defence of the Government based on payment of Honorarium and Covid Insurance, is therefore only to be rejected.

17. As far as distribution of Onam Kits are concerned, the Onam Kits contained only 11 items and the Government has fixed ₹5/- per Kit as commission as is evident from Ext.P8 G.O. dated 19.02.2021. As the Onam Kits contain lesser number of items, there is no illegality or arbitrariness in fixing a lesser rate for distribution. The petitioners cannot as of right claim that they should be paid at a higher rate for distribution of Onam Kit.

The writ petitions are accordingly disposed of holding that the petitioners are not legally entitled to claim commission for distribution of Covid-19 Free Food-Kits and Onam Kits at the rates prescribed in Ext.P3 G.O. dated 30.11.2018. The respondents are directed to disburse arrears of commission, if any, payable to the petitioners for

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distribution of Covid-19 Free Food-Kits and Onam Kits at the rates specified in Exts.P6 and Ext.P8, within a period of two months.

Sd/-

N. NAGARESH, JUDGE

aks/24.01.2022

APPENDIX OF WP(C) 17739/2021

PETITIONER'S EXHIBITS

P1	COPY OF CIRCULAR NO.9/2018 DT 11.6.2018.
P2	COPY OF COMMUNICATION DT 17.7.2018 FORWARDED BY THE 2ND RESPONDENT TO 1ST RESPONDENT
P3	COPY OF GO DT 30.11.2018
P4	COPY OF GO DT 6.4.2020
P5	COPY OF INSTRUCTIONS DT 8.4.2020 FORWARDED BY THE 3RD RESPONDENT
P6	COPY OF GO DT 30.7.2020
P7	COPY OF GO DT 9.9.2020
P7(a)	COPY OF NOTICE DT 24.7.2020 BY CITY RATIONING OFFICER
P8	COPY OF GO DT 19.2.2021
P9	COPY OF ORDER DT 25.5.2021 ISSUED BY THE 3RD RESPONDENT
P10	COPY OF REPRESENTATION DT 25.5.2021
P11	COPY OF GO DT 27.5.2021
P12	COPY OF REPRESENTATION DT 19.7.2021
P13	COPY OF COMMUNICATION DT 2.8.2021 BY 3RD RESPONDENT
P14	COPY OF ANSWER GIVEN BY MINISTER FOR FOOD AND CIVIL SUPPLIES DT 4.8.2021
P15	COPY OF SPEECH DT 5.8.2021 OF MINISTER FOR FOOD AND CIVIL SUPPLIES FOR 2021-22.
P16	COPY OF ANSWER GIVEN BY THE MINISTER OF FOOD AND CIVIL SUPPLIES ON 11.8.2021
P17	COPY OF NEWS REPORT APPEARED IN MALAYALA MANORAMA DT 30.8.2021.
P18	TRUE COPY OF THE APPLICATION DATED 18.8.2021 SUBMITTED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT

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P19

TRUE COPY OF THE REPLY VIDE NO-354/19
DATED 23.9.2021 OBTAINED BY THE
PETITIONER UNDER RIGHT TO INFORMATION
ACT.

APPENDIX OF WP(C) 25197/2021

PETITIONER'S EXHIBITS

Exhibit P1	TRUE COPY OF THE GOVERNMENT ORDER GO(MS) NO 46/2018/F & CSD DATED 30.11.2018
Exhibit P2	TRUE COPY OF THE GOVERNMENT ORDER GO(RT) NO 106/2020/F& CSD DATED 6.4.2020
Exhibit P3	TRUE COPY OF THE GOVERNMENT ORDER GO(RT) NO 211/2020/F &CSD DATED 30.7.2020
Exhibit P4	TRUE COPY OF THE GOVERNMENT ORDER GO(RT) NO 98/2021/F &CSD DATED 9.2.2021
Exhibit P5	TRUE COPY OF THE ORDER VIDE NO M2- 23814/2020(2) DATED 25.5.2021 ISSUED BY THE 3RD RESPONDENT
Exhibit P6	TRUE COPY OF THE REPRESENTATION DATED 25.5.2021 SUBMITTED BY THE ALL KERALA RETAIL RATION DEALERS ASSOCIATION BEFORE THE GOVERNMENT
Exhibit P7	TRUE COPY OF THE GOVERNMENT ORDER GO(RT) NO 241/2021/G & CSD DATED 27.5.2021
Exhibit P8	TRUE COPY OF THE COMMUNICATION VIDE NO CCS/2245/2021-A7 DATED 2.8.2021 FORWARDED BY THE 3RD RESPONDENT
Exhibit P9	TRUE COPY OF THE ANSWER GIVEN BY MINISTER FOR FOOD AND CIVIL SUPPLIES DATED 4.8.2021 REGARDING THE COMMISSION TO THE ARDS
Exhibit P10	TRUE COPY OF THE SPEECH DATED 5.8.2021 OF THE MINISTER FOR FOOD AND CIVIL SUPPLIES FOR THE FINANCIAL YEAR 2021- 22 GIVEN FOR PUBLICATION
Exhibit P11	TRUE COPY OF THE ANSWER GIVEN BY THE MINISTER FOOD AND CIVIL SUPPLIES ON 11.8.2021 REGARDING THE COMMISSION TO ARDS

Exhibit P12	TRUE COPY OF THE GOVERNMENT ORDER GO(RT) NO 334/2021/F & CS DATED 1.9.2021
Exhibit P13	TRUE COPY OF THE ORDER VIDE NO CCS/174/2091-A9 DATED 10.9.2021 OF THE 2ND RESPONDENT
Exhibit P14	TRUE COPY OF THE NOTICE DATED 25.8.2021 REGARDING THE RELAY SATHYAGRAPH (NON VIOLENT RESISTANCE) IN SECRETARIAT FROM 1ST SEPTEMBER
Exhibit P15	TRUE COPY OF THE REPLY TO EXT P 14 VIDE NO D1/44/2021/F& CSD DATED 21.10.2021 GIVEN BY THE 1ST RESPONDENT
Exhibit P16	TRUE COPY OF THE APPLICATION DATED 18.8.2021 SUBMITTED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT
Exhibit P17	TRUE COPY OF THE REPLY VIDE NO B- 354/19 DATED 23.9.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT
Exhibit P18	TRUE COPY OF THE REPLY TO EXT P16 VIDE NO B-354/19 DATED 23.9.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT
Exhibit P19	TRUE COPY OF THE NOTICE VIDE NO A1- 569/2020 DATED 24.7.2020 PUBLISHED BY THE CITY RATIONING OFFICER
Exhibit P20	TRUE COPY OF THE GOVERNMENT ORDER GO(RT) NO 268/2020/F& CSD DATED 9.9.2020
Exhibit P21	TRUE COY OF THE GOVERNMENT LETTER NO.C3/25/2021/F&CSD DATED 06.11.2021 FORWARDED TO THE 3RD RESPONDENT.
Exhibit P22	TRUE COPY OF THE COMMUNICATION DATED 10.11.2021 ISSUED BY THE 3RD RESPONDENT TO THE REGIONAL MANAGER.
Exhibit P23	TRUE COPY OF THE COMMUNICATION DATED 03.12.2021 ISSUED BY THE 3RD RESPONDENT TO THE DEPOT MANAGER.